NOTICE: This opinion is subject to formal revision before publication in the bound volumes of NLRB decisions. Readers are requested to notify the Executive Secretary, National Labor Relations Board, Washington, D.C. 20570, of any typographical or other formal errors so that corrections can be included in the bound volumes.

Cintas Corporation *and* Union of Needletrades, Industrial and Textile Employees, AFL–CIO, CLC (UNITE). Cases 13–CA–40821, 13–CA–40885, 13–CA–41030, 28–CA–18488, 29–CA–25421, and 29–CA–25498

June 30, 2005

DECISION AND ORDER

BY CHAIRMAN BATTISTA AND MEMBERS LIEBMAN AND SCHAUMBER

On September 16, 2004, Administrative Law Judge Joel P. Biblowitz issued the attached decision. The Respondent filed exceptions and a supporting brief, a brief in opposition to the Union's exceptions, and a reply brief. The Union filed exceptions and a supporting brief, a brief in opposition to the Respondent's exceptions, and a reply brief. The General Counsel filed a brief in opposition to the Respondent's exceptions.

The National Labor Relations Board has considered the decision and the record in light of the exceptions and briefs and has decided to adopt the judge's rulings, findings,[1] and conclusions and to adopt the recommended Order as modified and set out in full below.

We adopt the judge's finding that the Respondent violated Section 8(a)(1) of the Act by maintaining the following confidentiality rule in its Cintas Corporation partner reference guide:

> We honor confidentiality. We recognize and protect the confidentiality of any information concerning the company, its business plans, its partners,[2] new business efforts, customers, accounting and financial matters.

Since the rule does not explicitly restrict Section 7 activity, it will only violate Section 8(a)(1) upon a showing of one of the following: "(1) employees would reasonably construe the language to prohibit Section 7 activity; (2) the rule was promulgated in response to union activity; or (3) the rule has been applied to restrict the exercise of Section 7 rights." *Lutheran Heritage Village-Livonia*, 343 NLRB No. 75, slip op. at 2 (2004). We agree with the judge that the rule's unqualified prohibition of the release of "any information" regarding "its partners" could be reasonably construed by employees to restrict discussion of wages and other terms and conditions of employment with their fellow employees and with the Union. Therefore, the rule is unlawful under the principles set forth in *Lutheran Heritage Village-Livonia*, supra.[3]

The judge ordered the Respondent to rescind the rule, post a notice in each of the facilities, and notify each employee in writing that the provision has been rescinded, and that they have the right to discuss their terms and conditions of employment with their fellow employees or with the Union. The Respondent contends that it would be unduly burdensome to require written notification of rescission of the rule to each of its tens of thousands of employees at locations across the country, and argues that this single violation does not warrant such an extensive remedy. We will modify the judge's order to conform with that recently issued in *Guardsmark, LLC*, 344 NLRB No. 97, slip op. 4 (2005).[4]

ORDER

The National Labor Relations Board adopts the recommended Order of the administrative law judge as modified and set forth in full below and orders that the Respondent, Cintas Corporation, Mason, Ohio, its officers, agents, successors, and assigns, shall

[1] The Respondent has excepted to some of the judge's credibility findings. The Board's established policy is not to overrule an administrative law judge's credibility resolutions unless the clear preponderance of all the relevant evidence convinces us that they are incorrect. *Standard Dry Wall Products*, 91 NLRB 1083 (1950), enfd. 188 F.2d 362 (3d Cir. 1951). We have carefully examined the record and find no basis for reversing the findings.

[2] The Respondent refers to its employees as "partners."

[3] Member Liebman dissented in part in *Lutheran Heritage Village-Livonia*, finding, contrary to her colleagues, that certain of the employer's rules were unlawful. In the present case, she finds that under either the majority or dissenting view in *Lutheran Heritage*, supra, the Respondent's confidentiality rule is unlawfully overbroad.

[4] "The Respondent may comply with our Order by rescinding the unlawful provisions and republishing its employee handbook without them. We recognize, however, that republishing the handbook could entail significant costs. Accordingly, the Respondent may supply the employees either with handbook inserts stating that the unlawful rules have been rescinded, or with new and lawfully worded rules on adhesive backing which will cover the old and unlawfully broad rules, until it republishes the handbook without the unlawful provisions. Thereafter, any copies of the handbook that are printed with the unlawful rules must include the new inserts before being distributed to employees." *Guardsmark*, supra, 344 NLRB No. 97, slip op. at 4 fn. 8.

1. Cease and desist from

(a) Maintaining provisions in its Cintas Corporation partner reference guide that prohibit its employees from discussing with nonemployees, or among themselves, wages, hours, and other terms and conditions of employment.

(b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Rescind the language contained in paragraphs (i), (ii), and (iii) at pages 5, 16, and 20 of the Cintas Corporation partner reference guide.

(b) Furnish all current employees with inserts for the current edition of the Cintas Corporation partner reference guide that (1) advise that the unlawful provisions above have been rescinded, or (2) provide the language of lawful provisions; or publish and distribute to all current employees a revised reference guide that (1) does not contain the unlawful provisions, or (2) provides the language of lawful provisions.

(c) Within 14 days after service by the Region, post at each of its facilities in the United States copies of the attached notice marked "Appendix."[5] Copies of the notice, on forms provided by the Regional Director for Region 28, after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. In the event that, during the pendency of these proceedings, the Respondent has gone out of business or closed any facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current and former employees employed by the Respondent at any time since January 1, 2003.

(d) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

[5] If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

IT IS FURTHER ORDERED that the consolidated complaint is dismissed insofar as it alleges violations not found.

Dated, Washington, D.C. June 30, 2005

Robert J. Battista, Chairman

Wilma B. Liebman, Member

Peter C. Schaumber, Member

(SEAL) NATIONAL LABOR RELATIONS BOARD

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated Federal labor law and has ordered us to post and obey this notice.

FEDERAL LAW GIVES YOU THE RIGHT TO

Form, join, or assist a union

Choose representatives to bargain with us on your behalf

Act together with other employees for your benefit and protection

Choose not to engage in any of these protected activities.

WE WILL NOT maintain provisions in our Cintas Corporation partner reference guide that prohibit you from discussing with nonemployees, or among yourselves, wages, hours, and other terms and conditions of employment.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL rescind the language contained in paragraphs (i), (ii), and (iii) at pages 5, 16, and 20 of the Cintas Corporation partner reference guide.

WE WILL furnish all of you with inserts for the current edition of the Cintas Corporation partner reference guide that (1) advise you that the unlawful provisions above have been rescinded, or (2) provide the language of lawful provisions; or WE WILL publish and distribute to all of you a revised reference guide that (1) does not contain the unlawful provisions, or (2) provides the language of lawful provisions.

CINTAS CORPORATION

Brigid Barnicle, Esq., Jonathan Chait, Esq., and *Henry Protas, Esq.,* for the General Counsel.

Joel Kaplan, Esq., Jeffrey Kauffman, Esq., and *Peter Walker, Esq. (Seyfarth, Shaw LLP),* for the Respondent.

Noah Warman, Esq., Ira Jay Katz, Esq., and *Judiann Chartier, Esq.,* for the Charging Party.

DECISION

STATEMENT OF THE CASE

JOEL P. BIBLOWITZ, Administrative Law Judge. This case was heard by me on April 26, 27, and 28, 2004, in Chicago, Illinois, on May 17, 2004, in Brooklyn, New York, and on May 18 and 19, 2004, in New York, New York. The consolidated complaint herein, which issued on December 31, 2003,[1] was based upon unfair labor practice charges that were filed by Union of Needletrades, Industrial and Textile Employees, AFL–CIO, CLC (UNITE) (the Union), on February 5, March 5, and May 8, for the Region 13 cases, on February 5, for the Region 28 case, and on February 6 and March 21, for the Region 29 cases.[2] The consolidated complaint alleges that Cintas Corporation (the Respondent) engaged in the following unlawful conduct:

Region 13: It is alleged that on about May 1, Respondent, by John Doyle and Maggie Regan, the general manager and human resource manager, at its Bedford Park, Illinois facility, and admitted supervisors and agents of the Respondent, threatened employees with the loss of benefits if they supported the Union, in violation of Section 8(a)(1) of the Act, and on about February 27, by Joe Bahena and Hector Ortiz, production supervisors and admitted supervisors and agents of the Respondent, discharged employee Miguel Campos because he supported the Union, in violation of Section 8(a)(1)(3) of the Act.

Region 28: It is alleged that a confidentiality provision contained in the Respondent's employee handbook limits its employees' right to discuss their terms and conditions of employment, in violation of Section 8(a)(1) of the Act.

Region 29: It is alleged that on about January 14, Respondent, by Adam Del Vecchio, its plant manager at its Central Islip, New York facility, and an admitted supervisor and agent of the Respondent, at a meeting of first-shift employees, threatened employees that if the Union succeeded in its campaign to represent them, they would lose certain benefits, including paid days off for their birthdays, their 401(k) plan and a portion of their paid vacation, and also directed the employees to refuse to sign union authorization cards, and to refuse to allow union representatives into their homes. It is also alleged that Del Vecchio, in late January or early February, at a meeting of the second-shift employees, threatened that if the Union were successful in its campaign to represent them, they would lose certain benefits, including paid days off for their birthday, cake and refreshments and coats with Respondent's name inscribed on them, and in late January, at a meeting of the second-shift employees, advised the employees to request the return of their signed authorization cards from the Union and to bring the cards to him, and gave the employees the Union's address and instructed them to go there to retrieve their authorization cards. It is further alleged that Respondent, by Norah Hickey, human resources manager, and admitted supervisor and agent of the Respondent, on January 22, solicited employees to engage in antiunion conduct by urging employees to join and/or lead the group of employees opposed to the Union and to speak to employees who opposed the Union and threatened that employees would lose benefits if they declined to engage in such conduct. All of this conduct is alleged to be in violation of Section 8(a)(1) of the Act. It is also alleged that on about February 21, Respondent discharged employee Clorinda Valdivia because of her support for the Union and because she refused to engage in antiunion activity, in violation of Section 8(a)(1)(3) of the Act.[3]

FINDINGS OF FACT

I. JURISDICTION

Respondent admits, and I find, that it has been an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act. The Respondent, with its headquarters in Mason, Ohio, employs approximately 27,000 people at approximately 350 facilities throughout North America. Its principal business is supplying workplace uniforms to other businesses. The only facilities of the Respondent involved herein are North Las Vegas, Nevada, Bedford Park, Illinois, and Central Islip, New York.

II. LABOR ORGANIZATION STATUS

Respondent admits, and I find, that the Union has been a labor organization within the meaning of Section 2(5) of the Act.

III. REGION 28 CASE

The complaint alleges, and the Respondent admits that since about August 5, 2002, the Respondent has maintained in its employee handbook entitled "Cintas Corporation Partner Reference Guide" the following corporate-wide provisions:

[1] Unless indicated otherwise, all dates referred to herein relate to the year 2003.

[2] Counsel for the Respondent's unopposed Motion to Correct Transcript is granted.

[3] At the conclusion of counsel for the General Counsel's Region 29 case, upon a motion of the Respondent, due to absence of any record evidence, I dismissed an allegation at par. 13 of the complaint that in January and February the Respondent included the names and addresses of the Union and Region 29 of the Board with certain employees' paychecks in order to encourage employees to retrieve their authorization cards from the Union.

(i) At page 5—Our business is highly competitive. Fortunately, we have an advantage over our competition. That advantage is our people—"partners, " as we call ourselves.

(ii) At page 16—We honor confidentiality. We recognize and protect the confidentiality of any information concerning the company, its business plans, its partners, new business efforts, customers, accounting and financial matters.

(iii) At page 20—Examples of behavior that could result in disciplinary action are:

> . . . violating a confidence or unauthorized release of confidential information.

It is alleged that by maintaining these provisions, the Respondent maintained a rule limiting its employees' right to discuss their terms and conditions of employment, in violation of Section 8(a)(1) of the Act.

The parties stipulated that at all material times the Respondent maintained an employee handbook entitled "Cintas Corporation Partner Reference Guide" which was distributed to its employees employed at its facilities throughout the United States, and the term "partner" or "partners" used throughout the guide is a reference to the Respondent's employees, who are employees within the meaning of the Act. The parties further stipulated that the allegation herein relates only to "the company" and "its partners" as referred to in (ii), not "its business plans . . . new business efforts, customers, accounting and financial matters." In defending against this allegation, Respondent alleges that this provision in its guide, "cannot be read as broadly as the General Counsel would like it to be read" and that there is no evidence that it had any chilling effect upon the employees' Section 7 rights. Further, Brenda Abramovich, Respondent's director of human resources for the rental division, testified and identified numerous flyers issued by the Union in 2003 and 2004 which were distributed to the Respondent's employees. These flyers contain pictures, and names, of a number of the Respondent's employees together with their wage rates and other terms and conditions of employment. For example, one flyer entitled "Uniform Justice" contains a picture of an employee of the Respondent with a copy of her earning statement showing her hourly pay rate. Another, shows a map of the United States, listing 12 of the Respondent's employees at 11 of its facilities, together with the hourly rate of each of these employees. Abramovich testified that she has received all of these flyers distributed by the Union since the Union began its organizing campaign in January. After receiving these flyers, she checked with the general manager of each plant where an identified employee was listed in a union flyer, and asked if any of those employees had been disciplined for her/his appearance in the flyer, and the answer for all the listed employees was no.

The guide states that the Respondent recognizes and protects "the confidentiality of any information concerning the company [and] its partners" and that "violating a confidence or unauthorized release of confidential information . . . could result in disciplinary action." In *Lafayette Park Hotel*, 326 NLRB 824, 825 (1998), the Board, quoting *Republic Aviation Corp. v. NLRB*, 324 U.S. 793 (1945), stated:

> Resolution of the issue presented by the contested rules of conduct involves "working out an adjustment between the undisputed right of self-organization assured to employees under the Wagner Act and the equally undisputed right of employers to maintain discipline in their establishments. . . . Opportunity to organize and proper discipline are both essential elements in a balanced society . . . ." In determining whether the mere maintenance of rules such as those at issue here violates Section 8(a)(1), the appropriate inquiry is whether the rules would reasonably tend to chill employees in the exercise of their Section 7 rights.

The ultimate question in these cases is whether employees reading these rules, would reasonably construe the rules as precluding them from discussing their terms and conditions of employment with other employees or a union, or would they reasonably understand that the rule was designed to protect their employer's legitimate proprietary business interests. Any ambiguity in the rule must be resolved against the promulgator, *Lafayette Park*, supra, where the Board found that the prohibition of divulging "hotel-private information" was not unlawful because employees would not reasonably view the rule as prohibiting them from discussing their wages with others*;* see also *Freund Bakery Co.*, 336 NLRB 847 (2001), and *Flamingo Hilton-Laughlin*, 330 NLRB 287, 292 (1999).

As regards Abramovich's testimony that none of the employees pictured, or referred to in the Union's flyers were disciplined for the release of the information contained in the flyers, the law is clear that the mere existence of such a rule, even if it is not enforced, constitutes an unlawful interference with employees' Section 7 rights, in violation of Section 8(a)(1) of the Act. *Independent Stations Co.*, 284 NLRB 394, 397 (1987); *Lafayette Park*, supra; *Main Street Terrace Care Center*, 327 NLRB 522, 525 (1999). In *Franklin Iron & Medal Corp.*, 315 NLRB 819, 820 (1994), the administrative law judge, as affirmed by the Board, stated:

> It makes no difference whether the employees were "asked" not to discuss their wage rate or ordered not to do so. Nor does it matter if the rule was unenforced or unheeded. In the absence of any business justification for the rule, it was an unlawful restraint on the rights protected by Section 7 of the Act and violated Section 8(a)(1).

I find that employees could reasonably construe the confidentiality provision in the manual as restricting their right to discuss their wages and terms and conditions of employment with their fellow employees and the Union. In addition, the Respondent has not presented legitimate business purpose for the employee prohibitions contained in the rule. I, therefore, find that this provision violates Section 8(a)(1) of the Act.

IV. REGION 13 CASE

A. Campos Termination

The Union began an active campaign to organize the Respondent's employees at Bedford Park, and other of Respondent's facilities, on about January 10, and beginning on about January 13, the Union distributed flyers to the employees at these facilities. Campos began his employment with the Respondent at its Bedford Park facility in about July 2002 as a loader on the third-shift working from 10 p.m. to 6 a.m.; Ortiz and Bahena were his supervisors. Catharine Slack, an organizer for the Union, testified that she visited Campos at his home in late January or early February. Even though he had already signed a union authorization card[4] (on January 27), Slack went to see him because she was told that Campos had a back injury, and she was helping people with workmen's comp claims. She told Campos to try to get an accident report from the Respondent and to ask if they would send him for a medical evaluation. When the Respondent initially failed to send him for a medical evaluation, Slack referred him to the Union's clinic for an evaluation. At this meeting at Campos' home, he gave her names and telephone numbers of other employees who might be interested in joining the Union. In addition, he attended union meetings in January and February, spoke to three fellow employees in the plant about the Union and wore a union button on his uniform for a couple of minutes a few weeks before he was fired, and he believes that this was observed by Ortiz and Bahena.

Campos testified that on about December 22, 2002, he slipped on a mop and twisted his lower back, although his application to the State Industrial Commission dated February 18, lists the date of the accident as December 29, 2002. Because this accident occurred at about 5 a.m. when neither of his supervisors were present, he had nobody to tell until he arrived the following evening, at about 10 p.m. for the start of the shift. At that time, he told Ortiz about the injury, and asked him if he could get somebody to help him with his work because of the injury. Ortiz told him to be careful, and that he would get him some help. Campos continued to work and, about 2 weeks later, he told Ortiz that his lower-back pain had gotten worse, and asked if they could send him to the Respondent's clinic or if Ortiz could fill out an accident report for him. Ortiz said that it was too late to fill out an accident report, but that he would check with the plant manager, Mike Shelley. Having not heard from Ortiz, about 2 days later he asked him if he had spoken to Shelley about his injury, and Ortiz said that he hadn't had a chance to talk to him yet. On the following day, Campos went to speak to Shelley and asked him if he was aware that he was injured on the job, and Shelly said that he knew nothing about it. Campos told him what happened and asked Shelley if he could fill out an accident report or send him to the clinic, and Shelly told him that it was too late, and he couldn't help him.

During January and February, Campos went to see a chiropractor about his back on two or three occasions. On February 17, he gave Bahena a note from the chiropractor stating that Campos was under his care and should be excused from work until February 24. Based upon this note, Campos was given off from February 17 through 24. After meeting with Slack, Campos was sent to the Union's Sidney Hillman Health Center on February 20. The health center gave him a note dated February 20 saying that Campos was examined at the health center and was diagnosed with low-back pain, recommending that he be off work from February 17 until further notice. The health center note has the Union's name in large bold letters at the top. Campos testified that at about noon on February 24, he took this note to Maggie Regan, the human resource manager at the facility. He had never met her before, and asked her if she was familiar with his injury and she said that she wasn't. She read the note from the health center and asked Campos who was UNITE. He told her that UNITE was a union and she said that they didn't have a union at the Company. He told her that UNITE was the union that was trying to get into the Company and that he was a member, and that's how he went to their clinic. She took him into the conference room and told him to wait, that she would get Shelley and John Doyle, the general manager of the facility. About 20 to 30 minutes later Shelley and Regan came into the room and Regan said that they would send Campos to their clinic. Shelley asked him why he joined UNITE, that all they were interested in was his money. Campos responded that Bahena refused to fill out an accident report for him, and the Union helped him by sending him to their clinic, although this is not referred to in Campos' affidavit given to the Board. Shelley filled out an accident report for Campos and Campos went that day to the Company's clinic. The note from the clinic lists the diagnosis as lumbar strain, states that he was given prescription medication, and that his activity from February 24 until the next visit is limited to no repetitive lifting over 15 pounds, no bending greater than 10 times per hour, and no pushing and/or pulling over 15 pounds of force.

Campos reported for work at his regular time, 10 p.m. on February 24 and gave this note to Bahena, who put him on light duty beginning that evening, folding aprons. He testified that on the following shift, Tuesday, February 25 into Wednesday, February 26, sometime prior to the end of the shift, he asked Bahena for permission to leave work a half hour early that morning and the following morning, February 26 and 27. He asked to leave work early because he had a doctor's appointment the following 2 days and, since he works all night, he wanted to get home early to get some rest before seeing the doctor. He gave Bahena a copy of the note from Respondent's clinic which, in addition to giving his diagnosis and listing the modified activity, at the bottom states that the next two scheduled visits are February 26 and 27 at 1 p.m. He testified that Bahena gave him permission to leave work early on both days, and he left work a half hour early on Wednesday morning at 5 a.m. He went to the Company's clinic on Wednesday, February 26, at about 1 p.m. The note from the doctor states that he could

[4] Counsel for the Respondent objected to the introduction into evidence of Campos' union authorization card because, "we knew at the time of his termination that he was a union supporter." Because of this admission, there will only be limited discussion of Campos' union activities. Further, counsel for the Respondent, in opposing turning over documents subpoenaed by counsel for the General Counsel, stated that he would stipulate that the Respondent had animus: "As I understand the standards for animus it is sufficient to show that the company is opposed to the Union. Our handbook says that. So, that's our position."

return to work on February 26, but with no repetitive lifting over 25 pounds and no pushing or pulling over 40 pounds and that his next visit was scheduled for Thursday, February 27 at 1 p.m. He testified that he gave this doctor's note to Bahena that evening when his shift began. He reported for work, as usual, on that evening, Wednesday, February 26, and left the following morning, at 5 a.m. February 27.

When Campos reported for work at his usual time on the evening of Thursday, February 27, Bahena asked him to come with him to Shelley's office. Bahena asked him why he left early on Thursday morning and he told them that Bahena had given him permission to leave work early on both Wednesday and Thursday morning. Bahena said that he had only given him permission to leave work early on Wednesday, not Thursday. Bahena wrote him up for leaving work early on Thursday, but Campos refused to sign it saying that he was lying, that he gave him permission to leave early on both days. Bahena told him, "That's enough, I'm not going to put up with your stuff anymore. If you want to get your job back, come in tomorrow morning and talk to Mike Shelley." Campos said that if he was being fired he wanted a note explaining why he was being fired, but Bahena said: "We don't give those papers here" and Campos left.

Campos' job involves loading shortages onto the trucks, which leave the facility at 6 a.m. It was Campos' responsibility to make sure that the trucks contained the required items prior to leaving the facility. Sometime in about January the Respondent allowed Campos to leave work a half hour early in order for him to get home early to give his car to his father. In about early February, either Bahena or Shelley told Campos that this accommodation was going to end on about March 1, and after that, he would have to work the entire shift, until 6 a.m..

Regan testified that Campos asked to speak to her on a Monday, presumably, February 24. He gave her the note from the Sidney Hillman Health Center and she asked him what he wanted her to do with it, and he said that he had an accident at work and he wanted her to fill out an accident report. Prior to this conversation she was unaware that he had been injured on the job. She testified that when she saw the note she did not ask Campos what UNITE was; she knew that they were attempting to organize the Respondent's employees. She asked if he had told anybody about the injury, and Campos said that he had told Shelley, so Regan called Shelley into the conference room, where it was decided that Shelley would fill out the accident report and that Campos would be sent to the Company's clinic.

Bahena, who began working for the Respondent in 2002, testified that he transferred to the third shift in about January because they were experiencing difficulty getting their trucks loaded on the third shift to be ready to go on the first shift. After transferring to the third shift, he realized that there was a "production flow" problem on the third shift, which had four employees. In order to alleviate the problem, he instructed Campos that he should first tally everything that needed to be done, then fold the items, and then load them onto the truck. Bahena testified about a written warning that he gave to Campos on the night of February 12. He noticed that Campos was not following the directions he gave him and he reminded him of it. Campos got upset and walked away from him. Bahena told him that he was talking to him and Campos said that he didn't want Bahena talking to him during the shift, he wanted to be told what to do at the beginning of the shift and to be left alone during the shift. Bahena told him that his job was to make sure that the work was performed properly, but Campos continued to argue with him and walked away from him while he was talking to him. After speaking to Ortiz, Bahena decided to give Campos a written warning, dated February 13, which states:

> Partner was insubordinate to supervisor. The shift supervisor has described in detail the daily procedure Miguel should use to prepare and load the shortages. 25 minutes into the shift and the partner had not begun his first task (totaling shortages). Supervisor instructed him to start totaling and Miguel became angry. He stated that he knew what to do and to leave him alone. Supervisor explained once again that the same procedure needed to be followed every day. In the middle of the explanation partner turned his back and began to walk away. Partner continued to argue with supervisor for several minutes. Partner was suspended for the duration of the shift.

Under "Describe in detail what performance/behavior you expect from the partner," Bahena wrote:

> Partner must begin work at 10 p.m. to 5:30 a.m. until February 28, 2003. He must follow direction exactly as the supervisor instructs. Partner must complete 100% load out as quickly as possible. Partner must work from 10 p.m. to 6 a.m. starting March 3, 2003.

As to the consequences to the employee if the behavior is repeated, Bahena wrote: "Any further occurrence will result in termination."

Bahena testified further that in January, Shelley accommodated a request of Campos to leave work a half hour early for an 8-week period. The final sentences of the February 13 warning were inserted because: "we just wanted to put that in writing." On February 17, when Campos gave him the chiropractor's note, Bahena gave him the next week off. When Campos returned to work on Monday night, February 24, into February 25, he gave Bahena the note from the Respondent's clinic. Bahena read the note and said that it was no problem; Campos could load the linen items and Bahena would load the mats, which were heavier, and that is what they did. When Campos reported for work the next evening, February 25 into February 26, he asked Bahena if he could leave work at 5 a.m. the next morning rather than 5:30 a.m., because he had a doctor's appointment. Bahena asked what time the appointment was, and he said that it was in the afternoon, but that he wanted to rest up for the appointment. Bahena reminded him that he had been absent from work for the prior week and lost a week's pay, and said that it didn't make sense to lose another half hour, but if he wanted to leave work early that morning, he could do so. No mention was made of the following day as well, and Campos did not show him any note that he had gotten from the clinic. Campos left work at 5 a.m. on February 26, and reported for work at 10 p.m. on February 26, and there was no talk that evening, or the following morning, about Campos leaving early

that morning. At about 4:30 a.m., while Bahena was walking through the plant, he saw Campos eating an orange on the production floor; this was not during a break. He told Campos that he was not allowed to do that in the production area, Campos threw the orange away, and Bahena returned to loading the trucks. When Bahena returned to the production area about a half hour later he did not see Campos. He asked another employee where Campos was, and he said that he thought that he went home. Bahena went to the parking lot and saw that Campos' car was gone. When he saw Shelley, he recommended that Campos be terminated because of leaving early without permission, and the orange incident that evening: "It just seemed like another case where Miguel was doing what Miguel wanted to do. To me it was absolute, clear-cut insubordination." That morning, Bahena wrote up the incident:

> Partner left work at 5 a.m. on 2/27/03, 1/2 hour before the end of his shift. Miguel is currently working a reduced (7-1/2 hour) schedule, due to a ride issue that he has. This arrangement was made between himself and his Plant Manager. At 5:02 a.m. the supervisor realized Miguel was not in his work and began searching the plant for him. . . . checked the parking lot and Miguel's car was gone. In summary, partner left early without supervisor's permission.

As to what performance/behavior he expects from Campos, Bahena wrote: "Partner must work the entire scheduled shift (10 p.m. to 5:30 a.m.) unless given permission by the supervisor. This was covered with Miguel in the write-up that occurred on 2/13/03." On the evening of February 27, when Campos reported for work, Bahena, with Ortiz present, told him that he was fired. He testified that, at that time, he does not recall knowing that Campos supported the Union. However, he testified that he saw the note from the Sidney Hillman Health Center regarding Campos in February, although he does not remember much about the circumstances of seeing it. In addition, he testified that Campos gave him the note from the Company's clinic (which states on the bottom that the "next visits" are February 26 at 1 p.m. and February 27 at 1 p.m.), but he does not remember which parts of this note he looked at or did not look at: "The main parts I normally look at is the restricted activities."

Shelley, who left the Respondent's employ in about July, had been employed at the Bedford Park facility for about 10 months; Bahena and Ortiz reported to him. His normal working hours were from 5:30 a.m. to 6 p.m. so that he could observe all three shifts. He testified that he was aware that in January they had given Campos a shortened shift from 10 p.m. to 5:30 a.m. because of a vehicle issue that he had with his family. This accommodation was temporary and was to end on March 1. He testified that on February 27 Bahena told him that Campos left work early without permission, and he recommended that Campos be terminated, and Shelley approved Bahena's recommendation. He testified that at that time he had no knowledge of any union activity by Campos, except that he did see the UNITE name on the doctor's note that Campos gave them.

The Charging Party introduced subpoenaed evidence of another employee, John Katulka, who had an attendance problem. On November 25, 2002, Katulka was given a verbal warning for the failure to call, or show up for work, adding: "This is not the first time John has had an attendance issue. Any further insubordinate action will result in a written warning and/or possible suspension." On December 23, 2002, Katulka was issued a partner disciplinary documentation, stating that he missed a total of 2 days and was late to work, or left early, on three occasions, the latest of which was December 20, 2002, and that he was suspended until December 26, 2002, and would be on probation until April 19, and would be terminated if he didn't follow the rules. On January 17, he was terminated. The report states that he picked up his check at 5 a.m. on January 16 and left without completing his shift.

Under *Wright Line*, 251 NLRB 1083 (1980), counsel for the General Counsel must make a prima facie showing sufficient to support the inference that the discriminatee's protected conduct was a "motivating factor" in the employer's decision. If counsel for the General Counsel satisfies this burden, then the burden shifts to the Respondent to demonstrate that it would have taken the same action even in the absence of the protected conduct. The evidence herein establishes that counsel for the General Counsel has satisfied her initial burden under *Wright Line*. After being excused from work for the period February 17 through 23, based upon the note from the chiropractor, Campos came to work on February 24 and gave Regan and Shelley the note from the Sidney Hillman Clinic, with the Union's name in bold letters at the top of the page. Clearly, at that point, the Respondent knew that Campos was a supporter of the Union. In addition to counsel's admission that the Respondent knew that Campos supported the Union, there is some evidence of disparate treatment between Campos and Katulka. Campos was fired for leaving work early on one occasion (in addition to the insubordination suspension 2 weeks earlier) while Katulka was not fired until his sixth offense of not appearing for work or arriving late or leaving early. I, therefore, find that counsel for the General Counsel has sustained her initial burden herein.

The more difficult issue is whether the Respondent has sustained its burden to establish that Campos would have been fired even absent his protected activities. Both counsel for the General Counsel and counsel for the Respondent, in their briefs, argue that their witnesses were totally credible and the witnesses on the other side were not believable. This argument relates principally to Campos' testimony that he requested, and received, permission to leave work early on both February 26 and 27, while Bahena testified that Campos only asked permission to leave work early on February 26, and that he granted that request. This is a difficult credibility determination because I found neither Campos nor Bahena clearly more credible than the other. Neither one had a clear, and convincing, memory of the events. Campos' testimony often changed, or was unclear, and Bahena often testified that he couldn't recollect certain events. Counsel for the General Counsel, in an attempt to establish that Campos was terminated unlawfully, argues that Campos was not treated similarly to other employees who were not involved in union activities. In addition to the situation involving Katulka, Herbert Johnson received a first written warning on April 16, 2001, for sleeping in his truck while on the clock. The warning states that if the behavior continued, it would re-

sult in a second written warning and "possible termination." Johnson was a no call/no show on June 18, 19, and 20, 2001, and was "self-terminated." Alby Fileto was issued a partner disciplinary documentation dated September 4, 2001, stating that he was absent from work on August 29, 2001, even though he did not have any accumulated leave to cover the absence, concluding: "This is partner's 2nd written occurrence. Continued behavior will result in additional written occurrences and possible termination." George Sanchez was absent from work on January 8, 9, 11, 12, 15, and 16, 2001, without any medical documentation. On January 16, 2001, he was notified that if he did not report for work the following day, he would be terminated. When he did not report for work on the following day, he was terminated. Counsel for the Respondent argues that none of these other situations is analogous to the instant matter involving Campos because 2 weeks earlier, Campos was suspended for insubordination together with a written warning that the next incident would result in termination.

Counsel for the Respondent, in his brief, also argues that it is unrealistic to argue that Campos' termination was caused by his union activities, for a number of reasons. The Respondent's knowledge of Campos' union activities was limited to the Sidney Hillman Health Clinic note and the discussion that followed; there is no evidence that the Respondent knew that he signed a card for the Union, attended union meetings, or spoke to other employees about the Union. In addition, there is no evidence that Bahena or Ortiz saw Campos when he wore a union button for a couple of minutes a few weeks prior to his discharge. Yet, employee Josefina Casarubia, who testified regarding the alleged threats discussed below, was engaged in more extensive union activities, including one of five letters that she signed, discussed above in section II, which appeared in a union leaflet distributed in April. The letter, entitled: "We need respect" states:

> In five years I have taken three sick days and they were taken from my vacation days. They don't pay attention to our complaints. They clean the bathrooms with strong chemicals that due to the strong smell prevent us from using the bathrooms after they are cleaned. They don't listen to anyone. We ask for racks for our clothes but they don't have enough racks so we have to put our uniforms on the floor and later they scold us for getting them dirty.

Counsel for the Respondent, in his brief, notes that even after writing this letter, Casarubia is still employed by the Respondent.[5] He also argues that even after learning of Campos' support for the Union, Bahena agreed to assume the heavy work part of Campos' job to comply with his work restrictions, and agreed to let him leave work early on the morning of February 26, stating: "All of this is hardly consistent with Campos' claim that Bahena was looking to punish him for supporting the Union."

[5] On August 8, the Union filed an unfair labor practice charge alleging that the Respondent disciplined Casarubia in retaliation for her activities on behalf of the Union. On December 18, the Region approved the withdrawal of the charge.

On the basis of all of the above, I find that the Respondent has sustained its burden of establishing that it would have terminated Campos even absent his union activity, based upon his leaving work early without permission on February 27, together with his warning for insubordination 2 weeks earlier. In addition to the fact that his union activities were limited, certainly less and not as obvious as Casarubia's union activity, I find especially persuasive the fact that after being given the note from the Union's clinic, the basis of Respondent's knowledge of Campos' union activities, Bahena agreed to assume the heavier part of Campos' work duties. Based upon all of the above evidence, I credit Bahena's testimony that he did not give Campos permission to leave early on the second day, and that when he realized that he had left, he recommended that he be fired: "It just seemed like another case where Miguel was doing what Miguel wanted to do. To me it was absolute, clear-cut insubordination." I, therefore, recommend that this allegation be dismissed.

B. Alleged Threat of Loss of Benefits

The complaint alleges that on about May 1, Regan and Doyle threatened employees with the loss of benefits if they supported the Union, in violation of Section 8(a)(1) of the Act. Casarubia has been employed by the Respondent for 5 years. She testified that the Respondent conducted a meeting of the first-shift employees in the cafeteria at the Bedford Park facility in May. About 60 to 80 employees attended the meeting which was presided over by Shelley, Regan, and John Doyle, the general manager. Shelley spoke in English and Regan interpreted what he said in Spanish. They said that they were there to talk about the Union which wanted to come in to the Company. They were concerned because the Union only wanted their money and it would cost the employees about $20 a month. They told them to think about it very well, because "the Union would not give us a raise and instead that the Union would take away some benefits." Casarubia was then asked by counsel for the General Counsel if the subject of 401(k) or profit sharing came up at the meeting, and counsel for the Respondent objected that it was a leading question, and counsel for the General Counsel had failed to exhaust the witnesses' recollection before asking a leading question. I sustained the objection, and counsel for the General Counsel then asked Casarubia if she remembered anything else coming up at the meeting. Casarubia testified: "Well, I understood that Mike, about this John,—about a 401 or profit share, that if we enter into a Union we would lose that, that's what I understood." She testified further that an employee, Anna Ventura, asked Regan a question about social security cards, but Regan would not let her speak and told her to shut up.

On cross-examination Casarubia testified that Regan said that if the Union came in they would lay off people because there wouldn't be enough work, and that "all the benefits that we had, the Union would take away those." As for 401(k) plans and profit sharing, she testified: "[T]he words I understood, profit sharing, 401k, that if the Union entered that we could lose that." She could not recollect Regan speaking about Social Security or social security cards.

Regan, who speaks English and Spanish fluently, testified

that in April, she and the other HR managers were notified by the Respondent's payroll department that the Social Security Administration had notified them that there was a discrepancies between some of their employees' names and their social security numbers. On March 31, Respondent's headquarters sent Bedford Park and its other facilities a form letter to send to employees notifying them of the mismatch problem that Social Security notified them of, and asked them to "validate" their name and social security number against their social security card. On April 11, Regan sent this letter to 10 employees (out of 110 production employees at the facility) asking them to check their records to see if there was a mismatch in their card and social security number; they received only one response to these 10 letters. Regan testified that after these letters went out there were rumors in the plant that the Respondent was questioning employees' resident alien status. In addition, shortly after these letters went out the Union distributed a leaflet entitled: "Do not sign a pact with the devil." The leaflet told the employees that whatever their nationality, that they had rights, and that they should not sign anything that the Company gave them until it was reviewed by a lawyer. Shortly thereafter, the Union distributed another leaflet with the same message. Because of these rumors, and to answer the Union's leaflets, the Respondent held meetings with the employees at the facility on May 1 or 2; this was the first time in her 4 years as human resources manager that she was notified of social security mismatches, and it was the first time that she had conducted a meeting for employees on this subject. The first-shift meeting was at 1 a.m.; the second-shift meeting was about 2:30 p.m. She, Doyle, and Shelley were present for the Respondent. Doyle began the meetings by saying that it was called to talk about the social security mismatch letters that were sent to some of the employees. Regan translated and then took over the meeting. She told the employees that the Company's headquarters told them that there was a discrepancy between the names of some employees and their social security numbers and that's why the letters were sent out; that they were not questioning the employees' resident alien status. Shelley did not speak at the meetings, and she never said anything to the effect that the Union would cost the employees $20 a month, nor did she say that if the Union came in the employees would lose their 401(k) or other benefits. In fact, the Union was not discussed at these meetings.

Shelley testified that the Respondent had two meetings of employees to discuss the social security mismatch issue. He did not say anything at these meetings; Regan spoke, in Spanish. Neither himself, Regan, or Doyle said that if the Union came in it would cost the employees $20 a month or that the employees would lose their 401(k) or other retirement benefits. He testified further that in late April or May the Respondent conducted three or four meetings with the employees about the Union in which Regan did the speaking, in Spanish.

The sole evidence supporting this allegation is Casarubia's testimony that Regan, interpreting for Shelley, told the employees that the Union wanted to come into the Company; that the Union was only interested in their money; that it would cost them about $20 a month; and that the Union "would take away some benefits." She also testified that "she understood" that if they "enter into a Union we would lose [401 and profit sharing], that's what I understood." On cross-examination, she testified that Regan said that if the Union came in, "all the benefits that we had, the Union would take away those." This is an unusual credibility issue because while Casarubia testified that these subjects were specifically discussed, Regan and Shelley testified that these subjects were never discussed at the meetings. Rather, the meetings were solely to discuss the social security mismatches. This discrepancy might be explained by the fact that in late April or early May the Respondent conducted three or four meetings with the employees to discuss the Union. Although I did not find Casarubia to be an incredible witness, I did not find her testimony to be definitive enough to overcome the testimony of Regan and Shelley. For example, she testified that she "understood" that they would lose these benefits if the Union came in. In addition, I did not find credible Casarubia's testimony that when Ventura asked a question about social security cards, Regan told her to shut up. If the Respondent was conducting a meeting to convince the employees not to support the Union, I find it highly unlikely that they would respond to employee questions by telling them to shut up. More likely, they would try to "make nice." Finally, with 60 to 80 employees attending the meeting, no other employees testified in support of these allegations. For all these reasons, I find that counsel for the General Counsel has not proven this allegation, and I recommend that it be dismissed.

V. REGION 29 CASE

A. The 8(a)(1) Allegations

These allegations involve allegedly unlawful statements that were made to the employees at the facility, some during meetings of the employees, as well as, the discharge of Valdivia. There is some confusion regarding the dates of the meetings that Plant Manager Adam Del Vecchio conducted with the employees. The principal reason for this confusion is the difficulty that some of the General Counsel's witnesses had with dates. For example, employee, Adela Viera testified that the union agents visited her at her home on January 14, which, in answer to a question from counsel for the General Counsel, she specifically testified was a Saturday, and that the first meeting conducted by the Respondent was on Tuesday, January 17. However, in 2003, the Saturday that Viera is apparently referring to was January 11, and the following Monday and Tuesday would have been January 13 and 14. In evaluating the allegations in this portion of the case I have attempted to correlate the testimony of counsel for the General Counsel's witnesses and the Respondent's witnesses as best as I could.

The union organizational drive at the Central Islip facility began in about mid-January. Viera testified that two union agents visited her at her home at about that time. In addition, on January 17 she saw these two union agents outside the facility carrying a sign with the Union's name saying: "We Want Justice." She testified that on that day, when she and the other employees were in the cafeteria at the conclusion of their break, Norah Hickey, the human resources manager, and Del Vecchio, admitted supervisors and agents of the Respondent, and John Yavorka, the general manager at the facility, told them to wait

for a moment because they were going to have a meeting. Del Vecchio spoke to the employees in Spanish. He told the employees that he heard that the Union was visiting them at their homes, but that they did not need a union because they had good benefits. He showed the employees "a letter," more likely a union authorization card, and told them not to sign it. If they were given one, "take it and throw it away." Upon the conclusion of her examination by counsel for the General Counsel, Viera was asked by counsel for the Charging Party what Del Vecchio said about benefits at this meeting; she testified that Del Vecchio said that if the Union came in they would lose their benefits, for example, their 401(k). In Viera's affidavit given to the Board, she said that Del Vecchio told them that he heard that the Union was visiting them at home, but that they didn't need a union, as they had good benefits. He held up a union authorization card and said that if the Union gave them such a card, they shouldn't sign it, and that was all that she could remember about the meeting. The affidavit does not refer to the threat of loss of benefits if the Union came in. Her affidavit also refers to a subsequent meeting where an employee asked Del Vecchio whether the Company would do anything against an employee who signed a union card, and Del Vecchio answered no.

Yavorka testified that on January 10, he learned from the Respondent's headquarters that the Union was attempting to organize the employees and there might be union agents at his facility the following week. On the following day, he received telephone calls from two of the service sales representatives (SSRs) telling him that union representatives visited them at their homes. Headquarters then told him to have meetings with employees beginning on Monday morning, January 13, to inform them of what was occurring. There were six meetings all together on that day, covering all the shifts at the facility, beginning early in the morning. Yavorka lead these meetings using "talking points" provided by corporate headquarters and Del Vecchio translated what he said in Spanish for the meetings of the first-, second-, and third-shift production employees; the other meetings did not require an interpreter. He told the employees that they knew that some of them were visited by the Union at home. If they hadn't been visited, they might be visited soon. There was no discussion of benefits or closing any of the Respondent's facilities. The employees asked some questions. One question was how the Union got the employees' addresses and telephone numbers and Yavorka assured the employees that the Respondent did not give this information to the Union. Another employee asked what happens if they sign a union card and he told them that it could mean that they joined the Union. Received in evidence was the "talking points" presentation that Yavorka employed on January 13. He testified that he read some of it word-for-word and used some of his own words in addition:

> Many of our Cintas partners across the U.S. and Canada have been solicited at their homes by representatives of UNITE. We have no idea how they obtained any partner's name or address. They did not get it from Cintas.
>
> First off, you should know that NOTHING requires you to allow union representatives into your home. In fact, you are under no obligation to even talk to union reps. They have no legal right to be on your property if you or your family members object. If the reps are on your property, you may ask them to leave, and if they refuse, you may contact the police.
>
> UNITE reps may ask our partners to sign a union authorization card. The card may even be presented in a way that leads you to believe you're only signing up for more information. Read carefully *anything* you are asked to sign.
>
> Beware—these cards are legally binding documents. You may be giving UNITE your authorization to represent and speak for you. Because it's a signed legal document, you cannot change your mind and get the card back. The union will not give it to you.
>
> We encourage you *not* to sign the card, just by signing the card you are joining UNITE and agreeing to many obligations, including having to pay union dues, union fees, union assessments, union initiation fees, possible union fines and honor UNITE strikes and picket lines. These things may not be explained to you by a UNITE rep. (Hold up a 3x5 inch card as an example of a union authorization card.). Signing a union authorization card is like signing a blank check and allowing someone else to write in the amount.
>
> Unions always make promises on what they will get for you. They can't deliver on those promises unless a company agrees to them.
>
> No Cintas facility has ever had a labor organization organize a facility. In fact, the only unions Cintas has ever had have come through acquisitions. Nearly all partners at those acquired locations when given the opportunity have thrown the unions out because they recognized that the unions added no value to them. And in no case have the partners brought a union back. In my opinion, we do not need a union.
>
> Again, I strongly urge you to not sign any document or card or feel pressured to do so when asked by a Unite representative.
>
> Are there any questions at this time?
>
> As always, I encourage you to let me know if you have concerns or questions.
>
> Thank you for giving me your attention.

Del Vecchio testified that he was present for the three meetings of the production employees on January 13; the first meeting was with the third shift, at about 6:30 a.m. The next meeting with the first shift took place before lunchtime, and the meeting with the second shift was at about 3:30 p.m. Yavorka read from the talking points "almost word-for-word" and he translated what he said in Spanish. Del Vecchio had a copy of the talking points that Yavorka used, so he was able to translate from the document, generally, one paragraph at a time. Del Vecchio could not remember Yavorka saying anything that was not set forth in the talking points document.

The next meeting conducted by the Respondent was the following day, January 14. This meeting was conducted in Spanish by Del Vecchio, with a different talking points presentation

prepared by the Respondent's headquarters. Entitled: "Tips for UNITE issues" it states:

> Thank the many partners who have come forward with input and feedback regarding the UNITE campaign.
>
> Many partners are upset about UNITE obtaining their personal information and using it to gain access to their homes. I can assure you that Cintas did not provide UNITE any information and we are very upset as well.
>
> Many partners have told us that UNITE reps have misrepresented themselves as "Cintas Union Representatives" or "Cintas Representatives"—it sounds like UNITE reps will use just about any tactic to enter your home or even to get you to stop and talk.
>
> Beware that UNITE reps will use many misleading and underhanded tactics to gain your support. For example, we have been told that UNITE reps have said:
>
> 1. "This card is only to get an election."
> 2. "This card is to obtain more information."
> 3. "A majority of your fellow workers have already signed."
> 4. "You must sign a card to vote."
> 5. "It will cost you more in initiation fees if you don't join now."
> 6. "Sign now and the union will protect your job."
> 7. "UNITE already represents Cintas in Las Vegas, Chicago and New Jersey."
>
> All of these statements are FALSE or misleading! Don't believe their story. These are typical union tricks.
>
> Ridiculous promises have already been made to some of our partners including:
>
> 1. UNITE can get the partner U.S. citizenship.
> 2. A $4.00 per hour pay increase for production partners and a starting salary of $50,000 for SSR.
>
> These are promises that UNITE cannot deliver even if they guarantee it.
>
> Based on everything we know they aren't getting anything like this for any of their members.
>
> Many partners have provided a UNITE flyer or union membership card. You have the right to refuse to sign a union membership card, and we hope that you will. If you sign it, you have entered a binding agreement whether or not you intended to. Please note that the opening line of the membership card states, (hold up card and read from the beginning) "I proudly join the Uniform Worker Council of UNITE." Folks, the cards UNITE wants you to sign isn't for additional information, or to check your interest. You may be joining UNITE without having a full understanding of your legal or financial commitments. Once you sign the card, you cannot get it back.
>
> Information that we have found on UNITE's membership shows that in the last 25 years their total membership has declined from 635,000 in 1977 to 200,000 in 2002. Ask yourself, if UNITE is so good at providing great wages and benefits why has their membership dropped by over 400,000 people—by over 2/3—over the past 25 years.
>
> And in the last two years many petitions have been filed to decertify UNITE representation in companies. The membership may decline even further. UNITE needs your money. But, in my opinion, you don't need them.
>
> In this difficult economy you have steady work and good pay and benefits for you and your family. And you don't have to join any union and pay costly union dues, initiation fees and assessments to keep your job! Based upon information UNITE told some of our partners, UNITE will charge you $7.25 per week to belong. That is nearly $400 per year.
>
> We don't need a union and we don't want a union. And we don't think a union would be good for you either.
>
> I hope you do two things to keep UNITE out of our facility:
>
> 1. Refuse to sign a union membership application and save your cash, and
> 2. Speak up on your right to not have a union here, and the right of all our partners to continue to work in a good, union-free environment.
>
> Are there any questions?
>
> Thanks for your attention this morning/afternoon.

Del Vecchio testified that he read this January 14 talking point presentation to the employees in Spanish. The employees asked questions, principally, what signing the union card meant and how the Union got their addresses. He answered that the Company did not know how the Union learned of their addresses, and that they did not give this information to the Union. He told the employees that the union card was a "legal document." When an employee asked if they would get in trouble for signing a union card, he assured them that they would not get in trouble. He never told employees that they would lose birthday benefits, or any benefits, if the Union got in.

Viera testified that the second meeting that she attended was in January. She was in the cafeteria, and they remained in the cafeteria where the meeting took place after lunch. Del Vecchio conducted the meeting with Yavorka and Hickey also present. The employees were shown a video about unions. Yavorka and Del Vecchio testified they conducted meetings with different groups of employees on either January 16 or 17 where a video, entitled: "Sign Now, Pay Later" was shown to the employees. In addition, Del Vecchio read another talking points presentation to the production employees in Spanish, while Yavorka read this presentation to the office employees and the SSR employees. Viera testified that the third group meeting that she attended was in about February. At this meeting, presided over by Del Vecchio, they were shown a video that told the employees that the Respondent had good benefits. Del Vecchio testified that there were three videos shown to the employees. The second one was shown the last week of January and the third one was shown the first week of February. The talking points for these videos that he presented were brief introductions to the video presentations.

Guarinex Santos, who has been employed by the Respondent since May 2002, and works from 3:30 to 11:30 p.m., testified that there were three or four meetings a week from January to the beginning of February. He signed an authorization card for

the Union on January 15 and the first meeting he attended was about a week later; it was attended by all of the employees on his shift, at 4 p.m. in the cafeteria. Del Vecchio, Yavorka and Hickey, as well as the supervisors, were present. Del Vecchio spoke in English and fellow employee Jose Aguilar translated into Spanish, as he did for all the meetings that Del Vecchio conducted with the employees. They said that if the employees signed the union cards and the Union came in, "the workers would lose the benefits that we had with the company." The example of benefits that they would lose was a cake on their birthday and a sweater with their name on it. He also testified that Del Vecchio said that "if the Union came in all of the benefits that we had would disappear" although no such statement appears in the affidavit he gave to the Board. Rather, the affidavit says that if the Union got in they "might" lose benefits such as birthday cakes and coats, which "could" disappear." After being shown his affidavit given to the Board, he testified that the employees were shown a video at this meeting where the Respondent's president said that the Union was not good for the employees, it would force the Company to move and it would be forced to close, and that "the benefits of the workers would disappear if the Union came in."[6] On cross-examination, Santos testified that Del Vecchio said that the benefits "were going to disappear definitively." Counsel for the Respondent then asked Santos:

> Q. Now do you remember anything else that Adam said before the video?
>
> A. He said that if the Union were to come in the benefits would disappear and the Union was not good for us. He also said that because of the Union a lot of companies have disappeared.
>
> Q. He did not say that if the Union came in Cintas would close its business?
>
> A. Many companies have disappeared due to that.
>
> Q. But he did not—no one at the meeting said that if the Union came in Cintas would move or shut down, did he?
>
> A. Yes, that's what I'm saying.
>
> Q. Did Adam say anything else at this meeting?
>
> A. He said that if the Union came in all of the benefits that we had would disappear.
>
> Q. All the benefits?
>
> A. Yes.

Santos was then shown his affidavit and admitted that there was nothing in the affidavit saying that Del Vecchio said that the employees would lose all of their benefits if the Union came in. Del Vecchio testified that on the final Friday of every month they celebrate the birthdays of the month by serving cake to the employees. At the employee meetings in January and February he never referred to these birthday celebrations. He also testified that Aguilar never translated for him at any of these meetings. Hickey testified that Aguilar assisted Del Vecchio in translating for one meeting. She could not recollect if he translated at other meetings as well.

Santos also testified about a meeting held in late January or early February on a Thursday. The meeting took place in the women's department at about 4 p.m. and all the employees from his shift, between 20 and 30, were present. Del Vecchio spoke to the employees in Spanish and told them that if they didn't want the Union, they should tell the Union that they wanted their cards back, that they no longer wanted to be represented by the Union. At one point he testified that Del Vecchio showed the employees a piece of paper containing the Union's address, and shortly thereafter, he testified that Del Vecchio said that if the employees came to his office, he would give them the Union's address. Del Vecchio also said that when they got their cards back, "his office door would be open to receive us . . . to hand the card in to him."

Del Vecchio testified that he held meetings with employees where he told them that he had the address of the Union and the Board. Prior to these meetings he was approached by employees who told him that they had signed for the Union, but that they had either changed their mind, they had been tricked or just didn't know what they were signing. He initially told these employees that he didn't know what to tell them, but after speaking to Yavorka and Respondent's headquarters, he told the employees that "we can't personally do anything, but we can provide them with the address of UNITE if they wanted that for their card back." He never told employees to bring their union cards to his office, never told employees what to do with their card if they got it back, and never encouraged, or instructed, any employee to get their card back. None of the employees ever gave him their union card.

Valdivia also testified about two meetings that the Respondent conducted with the employees where there was a threat that they would lose benefits if the Union came in. She testified that from the time that she first learned of the Union, mid-January, to her discharge on about February 21, the Respondent conducted meetings with the employees almost on a daily basis, with almost 20 meetings taking place during this 5- to 6-week period. All the meetings took place in the cafeteria at the facility, were before lunchtime, and lasted about 20 minutes. They were attended by all of the employees on her shift, about 50, including Viera, as well as Yavorka, Del Vecchio, Hickey, and "Paul." Del Vecchio was the person who spoke at these meetings, and he spoke in Spanish. At the first meeting, a few days after she was first approached by the Union, Del Vecchio said that many employees had told him that they were visited by the Union, but they didn't need a union and that Cintas was a good place to work: "He said not to open the door. And he said that if we were to belong to the Union we could lose benefits," although her affidavit given to the Board on March 4 does not mention the threat of the loss of benefits. "Betty" said that she had been visited by the Union and Valdivia said that she had also been visited by the Union, and "everybody was saying that they had also been visited." Del Vecchio told them that they should not open their doors, "and that we should be careful

[6] There is a transcript of the three videos shown to the employees. In addition, at the request of the parties, I watched the videos. Based upon my viewing of these videos, and a reading of the transcripts of these video, I find that they contained no threats that the Company would move or close, or that the employees would lose benefits if the Union came in.

with our jobs" or "watch our jobs." He also told them that many companies had closed because of the union.

Valdivia testified that there was another meeting conducted on about the following day at about the same time and place as the prior meeting with the same employees present. At this meeting, Del Vecchio said that he was going to show them a video in which the president of the Company was going to speak to them. At the conclusion of the video, Del Vecchio said that they should be careful with their jobs and "he said that we would lose benefits. . . . The contributions that the company made for insurance purposes, we would lose that." As testified, supra, by Yavorka and Del Vecchio, at the first and second meetings on January 13 and 14, Yavorka read, and Del Vecchio translated, the "talking points" set forth above. These talking points do not refer to the loss of benefits or to the Respondent closing any facility.

Paragraphs 14 and 15 of the complaint allege that on about January 14, at a meeting of its first-shift employees in the cafeteria, Del Vecchio threatened the employees that if the Union succeeded in its campaign to represent them they would lose benefits, including paid days off for their birthday, their 401(k) plan and a portion of their paid vacations, and that on January 14, as well, Del Vecchio also directed the employees to refuse to sign union cards and to refuse to allow union representatives to come into their homes. These allegations relate to the testimony of Viera and Valdivia. Paragraphs 16 and 19 allege that in late January or early February, Del Vecchio at a meeting of second-shift employees, threatened the employees that if the Union succeeded in its campaign to represent them, they would lose certain benefits including paid days off for their birthdays, cake and refreshments, and coats with the Respondent's name inscribed on them, and advised the employees to request the return of their authorization cards from the Union and to bring the returned cards to him, and provided the employees with the Union's address and instructed them to go there to retrieve their union authorization cards. These allegations relate to the testimony of Santos.

Counsel for the Respondent, in his brief, argues that the General Counsel's witnesses' credibility is compromised because of the large number of employees present at these meetings, yet, counsel only called Viera and Valdivia to testify about the first-shift production meetings, and Santos to testify about the evening shift meetings. Counsel for the Respondent further argues against Santos' credibility because of his confusion as to whether Del Vecchio was speaking in English or Spanish at these meetings. I find it unnecessary to discuss these two arguments because I found Viera, Santos and Valdivia's testimony about these meetings, and the corresponding allegations, unreliable for other reasons. Viera, Santos, Valdivia, Yavorka, and Del Vecchio each had some difficulty remembering what occurred at the meetings that the Respondent held with the employees, but that is certainly understandable as the meetings took place about 16 months earlier. The problem that I had with the testimony of counsel for the General Counsel's witnesses to these meetings is, what appeared to me, their attempts to embellish or exaggerate on what was said at the meetings. Viera initially testified that Del Vecchio said that they didn't need a union because they had good benefits and if they were given a union authorization card they should take it and throw it away. It was only after completing her direct examination from counsel for the General, when she was asked what Del Vecchio said about benefits, that she testified that he said that if the Union came in they would lose their benefits. However, no such statement appears in the affidavit she gave to the Board. Further, as argued in counsel for the Respondent's brief, her affidavit refers to a subsequent meeting where Del Vecchio, responding to an employee's question, said that the Company would not take any action against employees who signed union cards. Such a statement, even though made at a subsequent meeting, appears to conflict with a threat that if the Union came in the employees would lose their benefits. I found Santos' testimony even more unreliable. He testified that in the video that they were shown the Respondent's president said that the Company would be forced to close and the workers' benefits would disappear if the Union came in. However, no such statement appears in the videos. He also testified that Del Vecchio said that that if the Union came in the employees would lose their benefits, such as birthday cakes and sweaters with their names and that all their benefits would disappear. However, in his affidavit given to the Board he stated that Del Vecchio said that if the Union got in they "might" lose benefits and that the birthday cakes and sweaters "could" disappear. Finally, Valdivia testified that at the first meeting Del Vecchio said that if they belonged to the Union they "could" lose benefits, but even that statement does not appear in her affidavit given to the Board about 6 weeks after these meetings.

Because I credit the testimony of Del Vecchio over that of Viera, Valdivia, and Santos, for the reasons stated above, I find no credible evidence that Del Vecchio threatened employees with the loss of benefits, including 401(k)s, birthday benefits, and sweaters, if the Union was successful in organizing them, and I, therefore, recommend that these allegations, contained in paragraphs 14 and 16, be dismissed. There remains paragraphs 15 and 19, which allege that Del Vecchio, at meetings of first- and second-shift employees, in January, directed employees to refuse to sign union authorization cards and to refuse to allow union representatives into their homes, and advised employees to request of the Union that they return their signed authorization cards and that they should bring these cards to him, and provided the employees with the Union's address and instructed them to go there to retrieve their authorization cards. Viera testified that at the first meeting, Del Vecchio showed them a union authorization card and told them not to sign it, that if they were given one, they should take it and throw it away. Valdivia testified that (presumably at the same meeting) Del Vecchio said that many employees told him that they were visited by the Union, but that they should not open their door and that they should be careful with their jobs. Santos testified that at a meeting in either January or February, Del Vecchio told the employees that if they didn't want the Union they should tell the Union that they wanted their cards back and he showed the employees a piece of paper containing the Union's address. He also said that if they came to his office he would give them the Union's address and when they got their cards back, "his office door would be open to receive us . . . to hand the card in to him." On the other hand, the "talking points" read

by Yavorka and translated into Spanish by Del Vecchio says that if the Union comes onto their property the employees can ask them to leave and, if they refuse, they can contact the police, and that they encourage the employees not (emphasized) to sign a union card. The talking points on the following day says that the employees have a right to refuse to sign a union card, "and we hope that you will." In addition, Del Vecchio testified that he told the employees that he had the address of the Union and the Board and "we can't personally do anything, but we can provide them with the address of UNITE if they wanted to get their cards back." However, he never told employees to bring their cards to his office, what to do with their card if they got it back, or instructed or encouraged employees to get their cards back.

As stated above, I found counsel for the General Counsel's witnesses somewhat lacking in credibility on this subject. Santos was the least credible, with the most contradictions in his testimony, while Valdivia the most credible of the three, with the fewest contradictions. Therefore, I credit Del Vecchio's testimony regarding these allegations. Under Section 8(c) of the Act, an employer may encourage an employee to refuse to sign a union authorization card or, even, encourage employees to tell union representatives to leave their property, as long as these statements are not accompanied by threats or promises. I find *Airporter Inn Hotel*, 215 NLRB 824 (1974), and *Producers Rice Mill, Inc.*, 222 NLRB 875, 881 (1976), cited by counsel for the Respondent in his brief, right on point. The allegedly unlawful statement in *Producers Rice Mill* was: "Stay away from union meetings. . . . You don't have to go so just stay away." The administrative law judge found that this did not constitute a warning as there was no threat of retaliation or retribution. Rather, the employer:

> in total context, counseled them on their right to abstain from union activities, and specifically admonished them to avoid certain activities, including attendance at union meetings. Noncoercive admonitions to refrain from union activities are not necessarily prohibited by Section 8(a)(1) of the Act. . . .

Similarly, I find that the statements in the talking points telling the employees that they can ask the union representatives to leave their property does not violate Section 8(a)(1) of the Act, and I recommend that this allegation be dismissed.

I also find that Del Vecchio's statements to employees on obtaining the return of their union authorization cards does not violate the Act. He told them that he had the address of the Union and the Board if they wanted their cards back, but did nothing further. *Vestal Nursing Center*, 328 NLRB 87, 101 (1999), stated:

> As a general rule, an employer may not solicit employees to revoke their authorization cards. An employer may, however, advise employees that they may revoke their authorization cards, so long as the employer neither offers assistance in doing so nor otherwise creates an atmosphere wherein employees would tend to feel peril in refraining from revoking. Thus, an employer may not offer assistance to employees in revoking authorization cards in the context of other contemporaneous ULPs. [Citations omitted.]

Numerous cases, such as *Chelsea Homes*, 298 NLRB 813, 834 (1990), and *Kobacker Co.*, 308 NLRB 84 (1992), state that an employer may provide no more than "ministerial" aid to its employers in withdrawing from the union, and that is all that Del Vecchio did herein. In addition, there were no contemporaneous ULPs committed by the Respondent. I, therefore, recommend that this allegation at paragraph 19 be dismissed.

B. Solicitation and Termination of Valdivia

It is alleged that on about January 22, the Respondent, by Hickey, solicited Valdivia to urge other employees to join with a group of antiunion employees at the facility and threatened that employees would lose benefits if they declined to engage in such conduct. It is further alleged that the Respondent discharged Valdivia on about February 21, because of her union activities, in violation of Section 8(a)(3) of the Act. Respondent defends this latter allegation by stating that Valdivia quit her employment with the Respondent.

Valdivia began working for the Respondent in April 1997 repairing uniforms. She worked from 7:30 a.m. to 3:30 p.m., Monday through Friday. Although not crucial to the 8(a)(3) allegation involving her discharge, there was some testimony regarding the quality of her work. She testified that when she began working for the Respondent she was paid $7 an hour. She received a raise every year in April and her final pay rate was $9.35 an hour. She testified that when she was given the increases her supervisor told her that it was based upon her attendance and her work production, and that she was receiving the best increase among the employees. There is some conflict in the testimony on whether her work performance was spotless. Counsel for the General Counsel asked her if she ever received any warning or disciplinary action from the Respondent and she answered no. However, counsel for the Respondent produced a partner disciplinary documentation dated February 10, from her supervisor, John Fitzsimmons, who is no longer employed by the Respondent, to Valdivia stating that she had been absent 6 times in the last 12 months.[7] The warning states that she would have to adhere to the attendance policy by being at work, on time and in proper uniform every day. It is referred to as a written warning, concluding that the eighth occurrence will result in a recommendation for termination. Valdivia did not sign this warning, and she testified that she had never seen it before. Del Vecchio testified that in mid-February, Fitzsimmons showed him this warning and told Del Vecchio that he had attempted to counsel Valdivia about her attendance, but that she had argued with him about it and refused to sign the warning. Hickey testified that Fitzsimmons told her that he was trying to correct some attendance problems in his department, and Valdivia was one of the employees to whom he had given a warning for them "to clean up their act."

[7] Respondent provides its employees who have in excess of 5 years employment with the Respondent, as did Valdivia at the time, with 5 paid days of sick leave a year based upon their anniversary date of employment. Respondent's records establish that from April 2002 through Valdivia's termination, she was out on sick leave on 3 days, and worked 5 partial days.

Valdivia testified that she was visited at her home by two union representatives on a Friday in January. "Kelly" said that she was visiting all the laundry employees to talk to them about what was happening at the Company. Valdivia told her that she did not have time at that moment to talk to them and they left. On the following workday, most likely January 13, she talked about the Union with another employee. On a Saturday at the end of January, Valdivia attended a union meeting. Kelly and "Moreno" spoke, and told the employees that they were trying to organize them and talked about things that were happening at the Company. Valdivia asked if the Union had good lawyers to represent them because of the many injustices she had seen at the Company, and they said that they did have good lawyers. Valdivia testified: "From being a neutral person, I started wanting to belong to the Union." She signed a union authorization card on February 12.

In about mid-January, union representatives appeared near the entrance to parking lot at the Respondent's facility carrying signs. Shortly after these union representatives appeared, groups of employees stood across from the union representatives carrying signs stating that they did not want the Union. On January 22, Valdivia, who used an interpreter at the hearing, but testified that she understands a little English, saw Hickey and called her over to her work area and told her that the atmosphere at work was changing and that she did not like the change in the environment at the facility. By that she meant that the employees weren't speaking to each other because they believed that the supervisors were watching them and they didn't want them to think that they were talking about the Union. She testified that in response, Hickey told her in English: "You are the person who has the most seniority here, everyone is going to listen to you. You can go to the cafeteria and speak to all the people and tell them that we don't want a union and you can be the leader." Valdivia told Hickey: "I didn't want to be either against the company nor with the Union, I just wanted to do my work as usual." Later that day, Valdivia spoke to both Del Vecchio and Hickey about this conversation with Hickey and both told her that she must have misunderstood what Hickey had said.

Hickey testified that she had a conversation with Valdivia at Valdivia's work station at the facility on January 30:

> She told me that she was extremely unhappy with how things had changed in the building. People who used to eat lunch together and talk to each other were now at each other's throat. They weren't sitting together for lunch. She asked me to tell the Cintas partners who were outside the building picketing against the Union to stop doing that; to come in and stop. She told me if I did this the Union would go away.

Hickey told Valdivia that she wished she could tell both the Union and the partners to go away, but she was not allowed to do that. She testified that she never told Valdivia that as she was a long-term employee her fellow workers would respect and listen to her, nor did she tell her that she should talk to the other employees about the Union. At about 2:30 p.m. that day, Yavorka called Hickey and Del Vecchio into his office and told them that Valdivia had gone to Fitzsimmons and complained to him that Hickey told her to go outside and to demonstrate with the Respondent's employees, presumably, the antiunion demonstrators. Hickey was extremely upset by this allegation and Yavorka called the Respondent's attorneys and received permission for Hickey to meet with Valdivia to "review" what had occurred that day. Valdivia had already left work for the day so Hickey documented the events with Valdivia earlier that day:

> This is to document a series of incidents that occurred involving myself and Clorinda Valdivia.
>
> Thursday, January 30, 2003
>
> I was walking the plant floor about 8:30 this morning, talking to partners. As I approached Clorinda's work station, she raised her hand and called me over.
>
> She told me that she was extremely upset with what was going on outside our building. People who used to talk to each other and be friends were no longer talking, everybody was taking sides.
>
> She told me that I should tell the Cintas partners who were standing outside at the end of the 1st shift everyday, that they should stop going out there. They were only encouraging the Union to stay longer. If they stopped going out there the Union would leave.
>
> I answered Clorinda that I could not get involved in what partners were or were not doing that everyone had the right the [sic] voice their opinion during a union organizing campaign.
>
> Clorinda responded that the Union had tried this just before I joined the company and they had left after three or four days.
>
> I responded that I did not believe that they would go away quite that easily this time. It seemed obvious that the Union was serious in its effort to organize Cintas and other companies, and that every partner would probably be involved in this before it was over.
>
> I told Clorinda that if anything happened that concerned her, she was to report it immediately to John Fitzsimmons or Adam Del Vecchio.
>
> I was called into the GM's office at 2:30. Adam was there. I was told that a group of plant partners had approached John Fitzsimmons, 1st shift supervisor, with a complaint. They had stated that partners were giving them a difficult time because they thought they were involved with the Union.
>
> Clorinda was with the group, and after they had lodged their complaint, she told John that I had told her that she must go out and demonstrate against the Union, and she did not want to do this.
>
> I explained to John and Adam what had happened and suggested that I meet with Clorinda, with Adam present, to clear it up.
>
> Because of the nature of the complaint, John Yavorka called Peter Walker's office. After speaking with the attorney, it was agreed that Adam and I should meet with Clorinda to clear this up.

> On Friday, January 31, Adam and I met with Clorinda in his office.
>
> I told Clorinda that John and Adam had advised me of her complaint. I apologized to Clorinda for any misunderstanding. I repeated again what we had discussed on Friday [sic] morning. She agreed that this was what had been discussed, but thought that I had meant that she would need to go out and get involved.
>
> I again apologized for any misunderstanding, making it clear to Clorinda that nobody had the right to tell her or any other partner what to do in this situation.
>
> She accepted my apology, we hugged, and she went back to work.

When she met with Valdivia that morning, she told her that she was upset that Valdivia misunderstood her and assured her that under no circumstances did she have to get involved in anything that was going on. Valdivia agreed, they hugged each other and Valdivia left the meeting smiling. As to her relationship with Valdivia between that day and February 21, she testified: "Civil, but I was a little leery."

As stated above, the union authorization card that Valdivia signed is dated February 12. She testified that after signing this card, she joined the union pickets near the parking lot at the Respondent's facility. However, it is not clear when she joined these union pickets. On direct examination, asked:

> Q. Now after this meeting where you signed the card on Saturday, did you go to work on Monday?
>
> A. Yes.
>
> Q. Now on that day did you do anything different that you had never done in the past?
>
> A. Yes.
>
> Q. What did you do that was different?
>
> A. When I would go out, when I would leave work, I stopped with the people from the Union.

The difficulty is that February 12 is a Wednesday, not a Saturday, so it is not clear exactly when Valdivia joined the union demonstrators outside the facility. What makes it even less clear is that her affidavit given to the Board states that she began joining the union demonstrators in the end of January. However, based upon all of her testimony, I find that she began joining the union demonstrators on about February 13. She testified from that day, until her final day of work for the Respondent, she stood outside with about seven or eight union demonstrators almost every day. She testified further that on the first day, while she was with the union supporters for about 20 minutes, she saw Del Vecchio and Hickey watching her from a window in the plant, about 25 to 30 feet from where she was standing, for a period of about 10 minutes. She testified that they were watching her from an office window at the corner of the building, although in her affidavit given to the Board she stated that they were observing her from a hall window.

Del Vecchio testified that the union supporters were standing on a sidewalk that runs along the street just outside the Respondent's property line. On the evening prior to his testimony, after being present during Valdivia's testimony, he measured the distance from where the union representatives stood to the location where Valdivia testified that he and Hickey observed her with the union supporters, and the distance is 150 feet. He identified from a diagram of the facility the location that Valdivia testified that he and Hickey were observing her as the office of the first aid & safety division of the Respondent. He testified that he never observed Valdivia from that office or any other location at the facility. He testified further that he has been in that office five or six times in the prior 4 years and that he does not believe that people in those offices would be visible from where the union demonstrators were located. He has seen union demonstrators in the area when arriving for, or leaving from, work or at other times when he had reason to be in the area. In addition, he has seen them from a window in the conference room at the facility. Hickey testified that prior to Valdivia's termination, she never observed her standing outside the facility with other union supporters, although after her termination she saw her with the other demonstrators wearing a union hat.

The incident that culminated in Valdivia's termination occurred on the morning of February 19. She testified that a repair order that she received said that an employee identification label on a uniform was about to come off. A fellow employee, "Yolanda," is the employee who attaches these labels to the uniforms, so Valdivia told Yolanda that she should be more careful with her work because she had been receiving a lot of uniforms with that problem. This problem had been occurring for a few months and it was causing more work for Valdivia. Yolanda responded that she was not the only one working there and Valdivia said that she wanted to let her know of the problem. Yolanda said that she was going to contact Del Vecchio, and Valdivia said that she was going to check her work. When Yolanda seemed annoyed, Valdivia said that she was joking and she should not be annoyed, but Yolanda walked away. Valdivia returned to work and, when she saw Fitzsimmons, she told him that she wanted to speak to Del Vecchio about Yolanda. Fitzsimmons said that he was called to Del Vecchio's office, but when he finished, he would come to see her. She saw Fitzsimmons go into Del Vecchio's office, waited about 5 minutes and then she stopped working and walked to Del Vecchio's office. When she got to the office she saw Del Vecchio, Fitzsimmons and Yolanda in the office and she asked if she could come in. Yolanda, smiling, said, "Look at that hypocrite." She also said that Valdivia insulted her, was rude to her and spoke to her like a supervisor. Valdivia responded that she couldn't believe what was happening as they had always gotten along, and Valdivia had often helped her when she had a problem. Del Vecchio then asked Valdivia to leave and said that he would call for her shortly. About 5 or 10 minutes later, Fitzsimmons came to get her and they both went into Del Vecchio's office. Valdivia showed Del Vecchio the shirt that caused the instant problem, and Del Vecchio told her that she should be more careful when she spoke to Yolanda. Valdivia said that she couldn't believe what was happening as she had not previously had a problem with Yolanda. She and Fitzsimmons left Del Vecchio's office and she told Fitzsimmons that Yolanda was lying, and Fitzsimmons told her not to talk to Yolanda, that she should just do her work.

On the following morning, Yolanda was yelling and pointing

out a shirt that needed to be repaired; Valdivia said that she didn't want to talk to her. She testified that Yolanda responded:

> She said that I could not tell her that I was not going to speak to her and that she was going to denounce me, that she was going to bring a case against me. She said that she was annoyed because I had not signed the card from the union . . . .[8]

After Yolanda said this, Valdivia became nervous, was shaking and crying and went to speak to Fitzsimmons in his office. Fitzsimmons told her that he would speak to Del Vecchio, and that she should go to the cafeteria to calm down. She stayed in the cafeteria for 2 or 3 minutes and then went to Del Vecchio's office. When she arrived, Fitzsimmons and Yolanda were just leaving, and Fitzsimmons went with her into the office. Del Vecchio told her that he had to fix the problem with Yolanda and Valdivia said that Yoldanda was lying. Valdivia testified that she then said that she "was feeling very nervous and that she couldn't work under those conditions." She said that she wanted to go home and Del Vecchio said that he couldn't stop her and that she should do whatever she wanted, and Valdivia said that she was going home. She walked out of his office, went to her work area, took her personal items that she brought to work every day, and left without clocking out for the day. She was not asked to return her uniform, clean out her work station or complete any paperwork prior to leaving that day.

On the following morning, Valdivia reported for work at her regular time, 7:30 a.m., "punched" in to work by placing her hand in the timeclock, as usual, went to her work area and began working. A few minutes later, Del Vecchio approached her and asked her to come to his office. When they got to his office, Del Vecchio told her that she no longer works for the company. She asked why, and Del Vecchio said that since she decided to leave the day before they understood that she no longer wanted to work for the Company. She told him that she left the day before because she felt ill and "couldn't work under those conditions." She told him that she had not quit her job. At that time, Hickey knocked on the door and Del Vecchio walked out of his office, closed the door and spoke to Hickey. Valdivia remained in the office. About 2 minutes later, Del Vecchio and Hickey came into the office and Hickey told her, "I'm very sorry, we already sent your papers to the corporation." Valdivia said that she had been a good worker and they always appreciated her work, "didn't that count for anything?" Hickey said that she was sorry, that Valdivia should go home and relax. Valdivia testified that she knows of two employees, "Consuelo" and "Victoria" who left work early several times because they felt ill, and were allowed to return to work the following day.

On cross-examination, Valdivia was asked about her argument with Yolanda on February 19:

> Q. And this was not the first time that you've had arguments with co-workers?
>
> A. That was the first time.
>
> Q. You've never had arguments with co-workers before?
>
> A. Never.

Counsel introduced Valdivia's evaluations in 1999 and 2002. In 1999, in 8 categories, her grades out of 10 were five 9s, two 8s, and one 7, in attendance, tardiness. In ability to work with others, she received a 9, with a comment: "Needs to be more tolerant of other personalities." In 2002, she received three 10s, three 9s, and one 8, in ability to work with others, with the comment: "Needs to improve a little bit on her ability to work with others." Her 1997 evaluation gave her a 10 in this area with the comment: "Gets along well with all members of the team" and a January 1999 evaluation gave her a 9, stating: "Gets along great with co-workers."

Del Vecchio testified that on February 19, Yolanda came to his office and told him that Valdivia was being rude to her. That she was acting like a supervisor and telling her what to do. Del Vecchio told her that it was important for them to get along since they worked in the same department. Later that day he told Valdivia the same thing. On the following day, Yolanda came to his office and said that she asked Valdivia a question, and Valdivia responded: "Don't talk to me." He does not recall what he told Yolanda other than that he would discuss it with Valdivia. About 5 minutes later, he met with Valdivia in his office and told her what Yolanda said. Valdivia said that Yolanda was lying, that she was the one being rude and that it was difficult working under those conditions. Del Vecchio repeated that it was important that they get along, since they worked side-by-side and shared equipment. Valdivia then stood up: "She said she did not want to work here anymore, that she didn't like working here, that she wasn't comfortable and she wanted to leave." Del Vecchio asked her if she was sure, because it seemed like a drastic decision resulting from a minor incident, and Valdivia "said she was sure, that she had thought about it, and that she had made a decision and that she did not want to work there anymore." He asked her a second time whether she wanted to reconsider and she said no, and left his office. She went to her work station, got her purse, and left without clocking out. He testified that the Respondent provides all the tools and implements that Valdivia used at work. Del Vecchio then called Yavorka and left him a message about what occurred and documented the incident in a memo. The memo corresponds generally with Del Vecchio's testimony, but adds that on February 19, Valdivia defended her actions by saying that she corrected Yolanda so that she would learn, and that Del Vecchio told Valdivia that if she saw Yolanda doing something wrong, she should tell the supervisor. In addition it states:

> Today [February 20] Yolanda came to my office to complain about Clorinda's behavior again. She asked Clorinda if she was able to repair a garment that had a hole in it. Clorinda then told Yolanda not to speak to her. Yolanda told her that they have to speak since they work together, and that she did not appreciate being treated badly because she (Yolanda) does not want the union. At this point Clorinda became very upset

[8] As Valdivia had signed a union authorization card a week earlier, it is not clear what this refers to, although it apparently reflects Yolanda's sense that Valdivia was unhappy that she, Yolanda, had not signed a union authorization card.

> and left the repair area. Yolanda also related to me that Clorinda had been repeatedly bothering her about joining the union and she felt harassed by Clorinda.

Sometime later that day Del Vecchio told Yavorka what happened with Valdivia: "[I]t was clear to us that she had quit and that we would do the appropriate paperwork, and that was it."

He testified further that on the following morning Valdivia returned to work and he called her into his office. He asked her what she was doing at work and she said that she had changed her mind. She prayed, thought it over and wanted to return to work. He told her: "When you leave, you leave. You can't return." Hickey joined the discussion in Del Vecchio's office and also told Valdivia that once she left, she couldn't return. On February 21, Del Vecchio wrote a memo to Yavorka stating, inter alia:

> At approximately 7:15 a.m. I witnessed Clorinda Valdivia walk into the building and go to the repair area. I got Paul Florio, the Stockroom Supervisor, and we both approached Clorinda and asked her to come to my office.
>
> Once in my office, I asked Clorinda what she was doing here. She stated that she wanted to come back to work, because she had changed her mind. I told her that she quit yesterday and that she had already been taken off the payroll, so it was not possible for her to return. I also told her that when someone quits a job, they cannot return because they changed their mind. She told me that she was very upset yesterday, and that yesterday she did not want to work here anymore, but she went home and prayed, and wants to come back and try again . . . .
>
> I then left the room to get Norah...Norah explained to her again that she could not quit and return to work the next day. Norah also explained to Clorinda that her paperwork had already been sent up to corporate and that she was not on the payroll anymore so we could not take her back. At this point Clorinda stated that she did not quit, but only wanted to leave for the day. I reminded Clorinda that I asked her more than once if she was sure that she wanted to give up her job and she had told me yes. . . . She also said that if we appreciated her work over the past 6 years we would let her return. Norah explained to her that we did appreciate her work, but that we are running a business and that we cannot have partners quitting and returning to work. Norah also informed her that John, the General Manager, was on vacation and that we could not do anything until we spoke to him. We advised Clorinda to go home and told her that we would call her on Monday, when John returned.

Hickey testified that the first she knew of this situation was on the morning of February 20 when Del Vecchio told her that Valdivia had come to his office and told him that she was leaving, that she did not to work there anymore. She and Del Vecchio then called Yavorka and left a message for him. When he called back, Del Vecchio told Yavorka what had occurred with Valdivia and Yolanda. After this conversation, Hickey prepared an employee status notification: Leave of absence/termination form (ESN) for Valdivia dated February 20. On this form she checked off the box for "Resignation" stating: "Please term partner-last day worked was 2/20." She testified further that every Thursday evening they transmit a package to the Respondent's headquarters and she forwarded Valdivia's ESN to them that evening. In addition, the Respondent employs a company that handles their unemployment claims and whenever they issue an ESN terminating an employee, they have to send forms to this company. She transmitted a form to them for Valdivia, checking off: "Walked off job." On the morning of February 21, Del Vecchio called her and asked her to come to his office. When she got there, Valdivia told them (in English) that she had changed her mind and wanted to return to work. Hickey told her that she had resigned, that her paperwork had been processed that day, and that she did not have the authority to let her return to work. After Valdivia left, they called Yavorka again, and left another voice mail for him. When he returned the call, they told him that Valdivia came to work and wanted to return and Yavorka asked if there had been similar occurrences with any other employees quitting and then attempting to return, and Hickey referred to Baqer Momin. They discussed the situation involving Momin, but she does not recall much that was said in this conversation.

At the conclusion of her cross examination, I asked Hickey:

> Q. The other question is about Ms. Valdivia's leaving. Now I know from your testimony that you were not present on the 20th when she discussed it with Adam, right?
>
> A. Correct.
>
> Q. But you were present when she came back on the 21st and she clearly wanted her job back?
>
> A. Correct.
>
> Q. Now tell me—you were there on the 21st. What would have been so difficult or terrible about giving her job back?
>
> A. We had already set a precedent with another partner, a brother of one of our supervisors, who had walked off the job. And we did not take him back. And we had to consider the consequences of not taking back one partner and taking back another. We felt that it was best to follow the precedent that we had set. It was our first experience with a walk off; Baqer Momin's was. And Clorinda's was our second. And we felt it best to follow the same policy.

Yavorka testified that he had a voice mail from Del Vecchio and Hickey on February 20 saying that they needed to speak to him because Valdivia had walked off the job and quit. He told them that there was nothing for him to do and they said that they would process her paperwork. On the following day, there was another voice mail from them. When he called them back, Del Vecchio said that Valdivia had changed her mind and wanted her job back. Yavorka asked, "Isn't this the same thing that happened with Baqer?" and they said that it was. Yavorka then said that they shouldn't let Valdivia come back.

Baqer Momin began his employment with the Respondent at the facility in about February 2001. The Respondent issued an ESN for him terminating his employment. The ESN states that "[j]ob abandonment" is the reason for the termination and that

his last day of employment was October 9, 2002. Del Vecchio signed it on October 21, 2002, and Yavorka approved it on October 24, 2002. The effective date of the termination is stated as October 10, 2002. Yavorka testified that he believes that Momin quit and walked off the job and then attempted to return to work the following day, but the Respondent refused to allow him to return. Del Vecchio testified directly about the Momin incident. Momin is the brother of a supervisor at the facility. On about October 9, Momin had a disagreement with his supervisor who asked him to perform a certain job and Momin replied that it was not his job. The supervisor then told him that if he wouldn't do it, that he could leave, and Momin left the facility. Either the next day, or a few days later, Momin returned and told Del Vecchio about the incident, said that he had made a mistake and wanted his job back. Del Vecchio told Momin that it was not possible for them to give him his job back because "he walked off the job, and we're trying to run a business here and we need people to be here every day and be responsible, and I couldn't allow him to just leave and come back." He testified that the 12-day delay between Momin's last day of work and the date that he completed the ESN was due to the fact that he did not personally witness Momin's leaving, and he wanted to discuss it with Yavorka before making a decision.

Subsequent to Valdivia's termination, another employee, Miriam Gonzales quit and attempted to return to work. Del Vecchio testified that on August 6, Gonzales, who began working for the Respondent in June, got into a disagreement with her sister, also an employee of the Respondent, and was leaving the facility. Del Vecchio tried to get her to calm down and to stay at work, but she said that she couldn't work there anymore and left. She returned the following morning and said that she wanted to return to work, but Del Vecchio said that it wasn't possible, "that I gave her every opportunity yesterday to think about it before she made a decision, but that now it was too late." They did not allow her to return to work, and her ESN, dated August 6 is effective August 7, and states that "[j]ob abandonment" is the reason for her leaving.

It is initially alleged that the Respondent, on January 22, by Hickey, violated Section 8(a)(1) of the Act by soliciting Valdivia to engage in antiunion conduct by urging her to join a group of employees opposed to the Union and to speak to employees who opposed the Union and threatened that she would lose benefits if she refused to engage in such conduct. In support of this allegation Valdivia testified that on January 22 she called Hickey to her work station and told her that she did not like the change in the atmosphere and environment at the facility and Hickey told her that as she was the person with the most seniority, the employees would listen to her. That she should go to the cafeteria and tell the employees that they did not want the Union. Hickey's testimony, and her memo of the events is contrary to Valdivia's testimony. She agrees that Valdivia told her how unhappy she was with the way things had changed at the facility; people were not talking to each other. However, she testified that Valdivia asked her to tell the employees who were picketing against the Union to stop and the Union would go away. Hickey replied that she wished that she could tell both sides to go away, but she was not allowed to do so.

As stated, supra, I found Valdivia more credible than Viera or Santos. However, I found her less credible than Yavorka, Del Vecchio, and Hickey, principally because her testimony was, at times, inconsistent and was at variance with her affidavit. In addition, on cross-examination, she had difficulty directly answering the question asked of her. Further, in making this credibility determination I have taken into consideration the immediate reaction of Del Vecchio and Hickey, upon hearing from Fitzsimmons of Valdivia's allegation, that she must have misunderstood what Hickey had said. It is clear that although Valdivia has some understanding of English, as she testified with an interpreter, she is not totally comfortable conversing in English. This leads me to believe that Valdivia may have misunderstood what Hickey said to her on that day. I therefore recommend that this allegation be dismissed.

The final allegation is that the Respondent discharged Valdivia on February 21 because of her support for the Union and because of her refusal to engage in antiunion activity, in violation of Section 8(a)(3) of the Act. As I have dismissed the allegation that Hickey asked her to engage in antiunion activity, this allegation is limited to the alleged retaliation for her union activities. The initial issue is whether counsel for the General Counsel sustained his initial burden under *Wright Line*, supra. The nuance of this case involves whether Valdivia quit her employment on February 20. If so, the issue is whether the Respondent violated Section 8(a)(3) by refusing to take her back on February 21, or whether she simply left work on February 20 because she was sick and Respondent fired her when she reported for work the following day.

I did not find particularly credible Valdivia's testimony about joining the union pickets and being seen by Del Vecchio and Hickey from a window in the building because, like some of her other testimony, it was, at times, shifting and at odds with her affidavit. In addition, I find it unlikely that the picketing and counter picketing would take place within 25 to 30 feet of the building. However, it is unnecessary to depend on this picketing for knowledge of her union activity as the Respondent was aware of her support for the Union as Del Vecchio's February 20 memo to Yavorka says that Yolanda felt harassed by Valdivia's repeated requests that she join the Union.[9]

I find that the events of February 20 support the Respondent's argument that Valdivia quit her employment on that day. Although I found Del Vecchio more credible than Valdivia, even if I were to credit the testimony of Valdivia regarding the events of February 20, I would find that a reasonable person could conclude that she was quitting. As she made clear to Hickey, she was unhappy with the picketing and counter picketing because people were not as friendly as they had been. In addition, there was the more recent difficulty with Yolanda. She testified that she told Del Vecchio that "she couldn't work under those condition" and that she was going home. However,

[9] I agree with counsel for the Respondent's argument in his brief that Del Vecchio's inclusion of this in his memo to Yavorka is relevant to his overall credibility because there is no other credible proof of the Respondent's knowledge of Valdivia's union activity. In addition, I find that his inclusion of this in the memo indicates that it was not a "big deal" to him. One could reasonably argue that if this was going to be the basis of the discrimination against Valdivia, he would not have put it in writing.

"those conditions"—the union and nonunion activity at the plant and the resulting animosities were not about to end soon. Therefore, her statement that she couldn't work under "those conditions" could reasonably be interpreted as, "I'll be out for quite a while." Even clearer is Del Vecchio's credited testimony that she told him that "she did not want to work here anymore." This clearly indicates that she wanted to quit, even though she did not specifically use that word. I find inapposite *Amperage Electric, Inc.*, 301 NLRB 5 (1991), and *Dico Tire, Inc.*, 330 NLRB 1252 (2000), cited by counsel for the Charging Party in her brief. Both involve companies that engaged in substantial unfair labor practices. In addition, in *Amperage*, the discriminatee said that he "ought to quit" which is not as immediate as Valdivia's statement to Del Vecchio and in *Dico Tire* the employee left work early because he was sick, and he got sick because the employer transferred him to a different, more strenuous job because of his union activities. None of that is present in the instant matter.

Having found that Valdivia quit, the final issue is whether the Respondent refused to take her back on February 21 because of her union activity, in violation of Section 8(a)(3) of the Act. I find the evidence does not support this allegation. Initially I note that Valdivia was not one of the more visible union supporters at the facility. Viera was a more active union supporter whose picture appears in a union leaflet in June, and she is still employed at the facility. More importantly, the Respondent established that after Momin quit, it refused to reinstate him even though his brother was a supervisor at the plant. Counsel for the General Counsel and counsel for the Charging Party point out some differences in these two situations, that Valdivia had been employed by the Respondent for almost 6 years and was an excellent employee, whereas Momin had been employed for about 1-1/2 years at the time of the incident. In addition, Valdivia returned to work the following day, whereas it is unclear when Momin returned, although his ESN is dated 9 days later. Although this argument is initially persuasive, I found convincing Hickey's testimony that because the Respondent has established a precedent 4 months earlier in not taking back Momin, they felt that it was best to follow the same policy because of the possible consequences of taking one back after refusing to take back the other. Although I might have done differently, if I were in the Respondent's shoes, taking into consideration Valdivia's 6 years of employment and her excellent work record, that cannot be a factor in my decision herein. I, therefore, find that the counsel for the General Counsel has not sustained his initial burden under *Wright Line*, and I, therefore, recommend that this allegation be dismissed.

CONCLUSIONS OF LAW

1. Cintas Corporation has been an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

2. The Union has been a labor organization within the meaning of Section 2(5) of the Act.

3. The Respondent violated Section 8(a)(1) of the Act by maintaining in its employee handbook a provision unlawfully limiting its employees in their right to discuss their terms and conditions of employment among themselves and with the Union.

4. The Respondent did not violate the Act as further alleged in paragraphs 8, 9, 14, 15, 16, 18, 19, and 21 of the consolidated complaint.

THE REMEDY

Having found that the Respondent maintained a provision in its employees handbook that unlawfully restricted its employees' right to discuss their terms and conditions of employment, I shall recommend that the Respondent affirmatively rescind the language contained in paragraphs (i), (ii), and (iii) at pages 5, 16, and 20 in its handbook. Respondent shall also post a notice at each of its facilities in the United States where the handbook is effective notifying its employees that it has rescinded these provisions. Counsel for the General Counsel, in the Region 28 portion of this case, in his brief, argues that in addition to posting a notice herein, the Respondent should be ordered to notify in writing all employees covered by the handbook that the defective language has been rescinded, citing *Double Eagle Hotel & Casino*, 341 NLRB No. 17 (2004). It is true that in its Order, the Board required the respondent to "Rescind the language . . . remove the language from the employee handbook *and notify employees in writing that this has been done.*" (Emphasis added.) However, it is not clear from this Order whether the Board meant that this could be accomplished through an amended handbook, or whether the respondent had to affirmatively write to each employee to notify them of the change. Regardless, with approximately 27,000 employees in North America, a vast majority of whom are in the United States, it would be unfair to require the Respondent to notify each employee in that fashion. Rather, I shall recommend that the Respondent be ordered to attach to each of the amended handbooks a letter to the employees notifying them of the provisions that have been changed or deleted.

On these findings of fact and conclusions of law, and based upon the entire record, I issue the following recommended[10]

ORDER

The Respondent, Cintas Corporation, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Maintaining language in its employee handbook which prohibits its employees from discussing or "releasing" information regarding their terms and conditions of employment with others.

(b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Rescind the language contained in paragraphs (i), (ii), and (iii) at pages 5, 16, and 20 of its Cintas Corporation partner reference guide and notify each employee, in writing, that the

[10] If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

offending provisions contained therein have been rescinded, and that they have the right to discuss their terms and conditions of employment with their fellow employees or with the Union.

(b) Within 14 days after service by the Region, post at each of its facilities in the United States copies of the attached notice marked "Appendix."[11] Copies of the notice, on forms provided by the Regional Director for Region 28, after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. In the event that, during the pendency of these proceedings, the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since January 1, 2003.

(c) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

IT IS FURTHER ORDERED that the consolidated complaint is dismissed insofar as it alleges violations of the Act not specifically found herein.

Dated, Washington, D.C. September 16, 2004

[11] If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated Federal labor law and has ordered us to post and obey this notice.

FEDERAL LAW GIVES YOU THE RIGHT TO

Form, join, or assist a union

Choose representatives to bargain with us on your behalf

Act together with other employees for your benefit and protection

Choose not to engage in any of these protected activities.

WE WILL NOT maintain language in our Cintas Corporation partner reference guide that prohibits you from discussing with nonemployees, or among yourselves, wages, hours, and other terms and conditions of employment.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce employees in the exercise of the rights guaranteed them by Section 7 of the Act.

WE WILL remove the offending language contained in the reference guide and notify each of our employees, in writing, that this has been done.

CINTAS CORPORATION